

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILMER GARCIA RAMIREZ,)	
SULMA HERNANDEZ ALFARO,)	
ANA P., on behalf of themselves and)	
others similarly situated,)	
)	Case No. 1:18-cv-00508
<i>Plaintiffs,</i>)	
)	
v.)	Class action
U.S. IMMIGRATION AND CUSTOMS)	
ENFORCEMENT ("ICE"), et al.;)	
)	
)	
<i>Defendants.</i>)	
_____)	

**DEFENDANTS' MOTION TO DE-CERTIFY THE CERTIFIED CLASS FOR LACK OF
NUMEROSITY AND COMMONALITY AND SUPPORTING STATEMENT OF POINTS
AND AUTHORITIES**

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INTRODUCTION

The Court should decertify this nationwide class, because it is not now, and will not be, sufficiently numerous to satisfy Federal Rule of Civil Procedure 23(a)(1). October 17, 2018, ICE implemented a process that assures proper, contemporaneous documentation of its compliance with 8 U.S.C. § 1232(c)(2)(B).¹ Under this procedure, ICE comprehensively documents its process of determining whether to detain or release former unaccompanied alien children (“UACs”) transferred to it from Department of Health and Human Services (“HHS”), Office of Refugee Resettlement (“ORR”) custody when they turn 18 years of age (also known as “age-outs”). The implementation of this nationwide process forecloses the introduction of new members into the class, absent some sort of discrete error or mistake by an individual ICE officer (for which individual remedies would exist).

Moreover, even assuming, *arguendo*, that the class remains sufficiently numerous today—which, in light of the documentation process, it does not—there does not exist one common question the resolution of which would decide all class members’ claims. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Court defined the class as all age-outs for whom ICE did not *consider* the least restrictive setting available, including alternatives to detention programs, as required by 8 U.S.C. § 1232(c)(2)(B). (ECF No. 50 at 69.) No future age-outs, however, will be joining the class (absent an error of the part of an individual officer). The Age-Out Review Worksheet provides contemporaneous, first-hand documentation of ICE’s consideration of least restrictive setting available, obviating the Court’s concern of the lack of such documentation when it granted a preliminary injunction as to two named Plaintiffs. (ECF No. 28 at 29-35.)

¹ Defendants’ counsel conferred with Plaintiffs’ counsel in December 2018 at the offices of Kirkland & Ellis, L.L.P. in Washington, D.C. Plaintiffs stated that they will oppose this Motion.

Although Defendants do not have the burden of proof on this motion, which remains on Plaintiffs, abundant evidence establishes that, since October 17, 2018, ICE Field Office Juvenile Coordinators (“FOJCs”) routinely document their custody determinations under 8 U.S.C. § 1232(c)(2)(B). Since that date, FOJCs have been required to upload, for each and every age-out, an ICE Form 70-070 “Age-Out Review Worksheet” to a SharePoint website maintained, supervised, and audited by National Juvenile Coordinators at the ICE Enforcement and Removal Operations’ (“ERO”) Juvenile and Family Residential Management Unit (“JFRMU”). In addition, for each age-out who remains in ICE custody, a FOJC must also upload documentation to the SharePoint site supporting the decision to detain.

Because these procedures are now nationwide requirements for FOJCs who make detention decisions for age-outs, only an individual mistake or error would make a new age-out a class member. Such mistakes are, as they should be, infrequent outliers. Moreover, failure to document decision-making using the Age-Out Review Worksheet would not in and of itself prove that ICE failed to consider the least restrictive setting taking into account danger to self and community and flight risk for a given age-out. Rather, assessing whether an age-out received the consideration due under 8 U.S.C. § 1232(c)(2)(B) would require an individualized, fact-specific inquiry that is now incompatible with classwide adjudication. Because of the infrequency with which ICE fails to document its decision-making and the unsuitability of outlier cases for single-stroke resolution of a common question, Plaintiffs cannot meet the requirements of either numerosity or commonality required to sustain continued class certification. *Wal-Mart*, 564 U.S. at 350.

Defendants, therefore, now contest numerosity and commonality, based on the evidence gathered since the Court’s ruling, *see Lightfoot v. District of Columbia*, 273 F.R.D. 314, 322-23 (D.D.C. 2011) (granting a second motion to decertify a class after denying the first), and move to decertify what is, and will remain, a largely empty class.

BACKGROUND

I. Procedural history

Plaintiffs brought this action on March 5, 2018. (Compl., ECF No. 1.) In their Complaint, two Plaintiffs sought relief under the Administrative Procedure Act (“APA”), alleging that, when they aged out of ORR placements, ICE failed to consider least restrictive setting available taking into account danger to self and community and flight risk, and, instead, automatically placed them and other similarly situated individuals in adult immigration detention facilities without considering the least restrictive setting and alternatives to detention as required by 8 U.S.C. § 1232(c)(2)(B). (ECF No. 1 ¶¶ 6, 8, 82).

On March 6, 2018, Plaintiffs filed for class certification. (ECF No. 6.) Defendants moved to dismiss. (ECF No. 20.) On March 30, 2018, Plaintiffs amended their complaint, adding a third named Plaintiff. (ECF No. 21 ¶¶ 15, 53-57.) Plaintiffs have added no new named Plaintiffs in the twelve months since then. Defendants opposed class certification (ECF No. 31), but did not contest numerosity, reserving the right to do so at a later date. (*Id.* at 14 n.3.)² On August 30, 2018, this Court denied Defendants’ Motion to Dismiss and granted Plaintiffs’ Motion for Class Certification. (ECF No. 50.) The Court defined the class as:

All former unaccompanied alien children who are detained or will be detained by ICE after being transferred by ORR because they have turned 18 years of age and as to whom ICE did not consider placement in the least restrictive setting available, including alternatives to detention programs, as required by 8 U.S.C. § 1232(c)(2)(B).

Id. at 69. Plaintiffs allege that ICE has no uniform practice and automatically places age-outs transferred from ORR placements in adult immigration detention facilities without considering the

² Even if Defendants did not explicitly reserve the right to contest numerosity, they did not waive the issue. The Court may revisit its prior certification ruling. *See, e.g., Lightfoot*, 273 F.R.D. at 322-23.

least restrictive setting available or alternatives to detention as required by

8 U.S.C. § 1232(c)(2)(B). (1st Am. Compl. ¶ 4, 102 ECF No. 21.) Notwithstanding the thousands of pages of discovery and hundreds of individual age out worksheets, Plaintiffs nonetheless cling to a fiction and oppose this motion.

II. Documentation Guidance issued on October 17, 2018

On October 17, 2018, ICE ERO Headquarters issued updated guidance to its officers in the field to improve documentation and tracking of custody determinations for age-outs. (Ex. A, *Memorandum on behalf of Tae D. Johnson, Assistant Director for Custody Management, to Field Office Directors and Deputy Directors, regarding Updated Guidance and Tracking of UAC Who Reach the Age of 19 While in ORR Custody*) (filed under seal). The updated guidance requires FOJCs to complete, for each age-out, an Age-Out Review Worksheet documenting the FOJC's consideration of the least restrictive setting available and alternatives to detention before making a custody determination. *Id.* The FOJC must upload the worksheet to an internal SharePoint website where it can be tracked and monitored by headquarters personnel. (*Id.*); (Ex. B, Transcript of the Deposition of JFRMU Chief Mellissa Harper (Dec. 6, 2018) (excerpts) at 8-18, 144-45, 149-52, 188-92, 210-20, 229-31, 235-42); (Ex. C, Harper Declaration (March 28, 2019) ¶ 26); (Ex. D, Index of Exhibits to Harper Declaration (filed under seal).) In addition, for each age-out detained in ICE custody, FOJCs must also upload supporting documentation to the SharePoint website. (Ex. A at 1-2.) The process helps document contemporaneously the Field Offices' consideration of least restrictive setting available taking into account danger to self, danger to community, and flight risk. (Ex. C ¶ 3.) ICE's JFRMU SharePoint site reflects that, between October 17, 2018 and January 30, 2019, 581 Age-Out Review Worksheets and supporting documentation were uploaded. (Ex. C ¶¶ 25, 27.) Thus, during that period, approximately 581 individuals "aged out" of ORR placements. Defendants submit all of these worksheets to the Court as evidence in support of this

motion. (*See* Ex. E, Index of Age-Outs Between October 17, 2018 and January 30, 2019 (filed under seal)); (Ex. F, Age-Outs Review Worksheets for Age-Outs Between October 17, 2018 and January 30, 2019 (filed under seal).)³

In the current version of the three-page Age-Out Review Worksheet, ICE requires FOJCs to document their consideration of information on a prospective age-out's criminal and behavioral history, status of immigration proceedings, legal representation, potential sponsors, and information about the age-out's ORR placement, including disciplinary history, and any recommendations provided by ORR contractors, including the Post-18 Plan. (Ex. A at 6-8, questions 3, 4, 5, 6, 7, 9, 10 & 11.) The worksheet provides a space for the FOJC to identify any available individual or organizational sponsors or supervised group homes. (*Id.* at 8, question 12.) If the FOJC declines to recommend placement in a group home or with a sponsor, the officer has space to explain his or her recommendation. (*Id.*) Likewise, if the FOJC determines that the age-out is a danger to themselves, a danger to the community, or flight risk, the FOJC would explain why, in the space provided. (*Id.* at 7, question 8.)

The worksheet also identifies several discretionary release options that are available to ICE officers, including orders of supervision ("OSUP"),⁴ orders of recognizance ("OREC"),⁵ ICE bonds,

³ Defendants produced these worksheets and supporting documentation to Plaintiffs on January 25 and February 21, 2019.

⁴ Release on an order of supervision is available to individuals who are subject to a final order of removal. *See* 8 U.S.C. § 1231(a)(3). The officer issues a Form I-220B, Order of Supervision, which lays out conditions of release and reporting requirements. 8 C.F.R. § 241.5.

⁵ Release on an order of recognizance is available for individuals who are in removal proceedings. 8 U.S.C. § 1226(a)(2)(B). The individual may pay a bond, and the immigration officer may impose conditions of release, such as periodic reporting, via the Form I-220A, Order of Recognizance. *See* 8 C.F.R. § 236.1(c)(8).

and ICE's Alternatives to Detention ("ATD") program.⁶ (Ex. A at 8, question 14.) The FOJC is able to identify which options were considered and explain why others were not. (*Id.*) Finally, the worksheet asks the FOJC to document a recommendation, considering the least restrictive setting available, and provide a custody classification level for those age-outs who will be detained. (*Id.* at 8, question 15.) A supervisory ICE officer must approve or disapprove the recommendation and provide a justification. (*Id.*, question 16.)

III. Former UACs who aged out prior to the documentation guidance

As of March 5, 2019, 19 age-outs who either were in ICE custody on August 30, 2018, or aged out between August 30, 2018, and October 17, 2018, inclusive, remained in ICE custody. (Ex. C ¶ 4.) To help memorialize the custody determinations made prior to the issuance of the new age out worksheet, Chief Harper asked FOJCs to send her office documentation that supported the decisions to detain former UACs who aged out prior to October 17, 2018, and who remained in custody. (*Id.*) Defendants submit the documentation herewith. (Ex. D (filed under seal).) Chief Harper summarizes the relevant information contained in these documents in her declaration. (Ex. C

⁶ ICE's ATD Program is used in a variety of contexts beyond custody determinations for age-outs. It is generally more restrictive than release on an OSUP or OREC. The ICE ATD Program supervises participants with contractor support and a combination of home visits, office visits, alert responses, court tracking, and technology. Under ICE's current contract with BI, Inc., ICE ATD officers determine the frequency of home and office visits, the type(s) of technology to which a participant is assigned, and whether to include court and alert management. The contract provides three types of technology: telephonic reporting, using a biometric voiceprint; GPS monitoring using an ankle bracelet; and "SmartLink," which allows participants to check in with ICE via their smartphones or tablets. ICE ATD officers may review and/or adjust case management levels and technology assignments at any time if circumstances change. The ATD Program is appropriate for aliens released on OREC, OSUP, a grant of parole, or a bond; it allows ICE to more closely monitor a portion of cases released from detention.

Under 8 U.S.C. § 1232(c)(2)(B), age-outs are eligible to participate in "alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision," including "placement of the alien with an individual or an organizational sponsor, or in a supervised group home." These examples of "alternatives" provided in the statute largely fall outside the scope of ICE's ATD program. (Ex. A.) FOJCs, however, consider these alternatives to detention when making age-out custody decisions.

¶¶ 5-23.) In all cases, the age-out presents a danger to the community or flight risk. The relevant information includes documentation of involvement in murder, rape, sexual assault, kidnapping, robbery, distribution of child pornography, simple assault, larceny, resisting arrest, gang affiliation, and flight risk. (*Id.*)

LEGAL STANDARDS

Certification is discretionary, and the Court remains free to modify or decertify the class in light of subsequent developments in the litigation. *See* Fed. R. Civ. P. 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”); *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982) (describing certification orders as “inherently tentative”). A court may reconsider its class certification order if compelling reasons cast substantial doubt on whether the class continues to meet the Rule 23 prerequisites. *Kremens v. Bartley*, 431 U.S. 119, 130 (1977); *Hartman v. Duffey*, 19 F.3d 1459, 1470, 1474–75 (D.C. Cir. 1994). Also, because “Rule 23 does not set forth a mere pleading standard,” *Wal-Mart*, 564 U.S. at 350, courts at times must “probe behind the pleadings before coming to rest on the certification question,” *Falcon*, 457 U.S. at 160. Although the Court cannot preliminarily inquire into the merits of the case, class certification necessarily involves considerations that are “enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Id.*

A class may be certified only if the prerequisites of Federal Rule of Civil Procedure 23(a) are satisfied: (1) it is so numerous that joinder of all members is impracticable (“numerosity”); (2) there are questions of law or fact common to the class (“commonality”); (3) the claims or defenses of the representative are typical of those of the class (“typicality”); and (4) the class representative will fairly and adequately protect the interests of the class (“adequacy of representation”). The proponents of a class action have the burden of proof as to each Rule 23 requirement. *See McCarthy v. Kleindienst*, 741 F.2d 1406, 1414 n. 9 (D.C. Cir. 1984). This is a continuing burden. Where, as

here, class certification is challenged, the proponent of continued certification bears the “burden of establishing that each of the requirements for class certification . . . are met.” *Lightfoot v. D.C.*, 246 F.R.D. 326, 332 (D.D.C. 2007) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)).

Likewise, commonality requires more than the presence of common questions of law or the mere assertion that class members have suffered a violation of the same provision of law. *Wal-Mart*, 564 U.S. at 350. Instead the resolution of the common question must “resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* “In other words, class members must have suffered the same injury *for the same reason*, such as a uniform policy or practice that is illegal” rather than the oversight or negligence of individual officials in individual cases. *DL v. D.C.*, 302 F.R.D. 1, 11–12 (D.D.C. 2013) (emphasis in original), *aff’d*, 860 F.3d 713 (D.C. Cir. 2017).

ARGUMENT

I. After implementation of the Age-Out Review Worksheet on October 17, 2018, the certified class cannot satisfy Rule 23(a)(1)’s numerosity or commonality requirements at present or going forward.

Plaintiffs cannot meet their continuing burden to establish that numerosity remains in the certified class. Approximately 581 former UACs aged out of ORR custody between October 17, 2018 and January 30, 2019. (Ex. C ¶ 25.) ICE officers completed Age-Out Review Worksheets for all 581 age-outs and uploaded supporting documentation in the SharePoint site for those age-outs whom ICE detained. *Id.* Chief Harper’s declaration and the completed worksheets demonstrate nationwide compliance with the October 17, 2018 documentation policy. (*See* Exs. C, E & F.)

More importantly, however, the Age-Out Review Worksheets and supporting documentation requirements demonstrate ICE’s nationwide compliance with its statutory obligations under 8 U.S.C. § 1232(c)(2)(B), to *consider* the least restrictive setting available for each age-out. The worksheet is more than a simple box-checking exercise. It contains sixteen questions, some of

which include subparts, that must be answered. *See* Ex. A at 6-8. Each element of 8 U.S.C. § 1232(c)(2)(B) has at least one corresponding question that elicits information relevant to that element. *See* Ex. A at 6-8. Some questions elicit information material to more than one element. *See, e.g., id.* at 7 (question 8) (asking about delinquency and gang affiliation, which are material to danger to the community and flight risk). Using flight risk as an example, the worksheet allows the officer to document the results of searches of various criminal and immigration databases, *id.* at 6 (question 3), which elicit information relevant to whether the age-out has an incentive to abscond, either to avoid criminal prosecution or appearance in immigration court. The worksheet allows the officer to indicate whether the age-out has pending applications for immigration benefits, *id.*, which would be relevant to the age-out's incentive to appear for removal proceedings in immigration court. The worksheet documents the nature of removability charges against the age-out, (*id.*, question 5), which is relevant, again, whether age-out has an incentive to appear for removal proceedings. The worksheet documents whether the ORR contactor provided a serious incident report from the ORR shelter, (*id.* at 7, question 6), which could indicate attempts to escape and, therefore, flight risk. The worksheet also provides space for the officer to confirm or deny the presence of other flight risk indicators, such as gang affiliation. (*Id.*, question 8.) The worksheet documents consideration of potential sponsors and the relationship of the sponsors to the age-out, *id.* (question 10), which also is relevant to flight risk considering that if an age-out lacks a fixed, stable address or family members willing to sponsor him or her the age-out may be more likely to abscond. Furthermore, the worksheet provides space for narrative responses and reasoning. (*See, e.g., id.* at 7, question 8) (requiring an explanation for a finding of danger to self or community or flight risk.) It provides space for FOJCs to state the reason for declining to utilize a particular alternative to detention. (*Id.* at 8, question 14.) It provides space for officers to explain why they decide not to place an age-out with an available sponsor or supervised group home. (*Id.*, question

12.) ICE officers also upload supporting documentation related to the age-out who remains in custody, which may include ORR Post-18 plans, email traffic, and relevant documents from the age-out's A-file to a SharePoint website monitored and controlled by ICE JFRMU. (*Id.* at 1, 3, 4.)

By any reasonable measure, ICE's present and continuing documentation procedure (which is, in fact, a nationwide practice) reflects compliance with Congress's mandate that ICE "shall consider" the least restrictive setting available in making decisions required by 8 U.S.C. § 1232(c)(2)(B). By requiring the FOJC to answer, in written, systematic form, questions that elicit information material to each element of 8 U.S.C. § 1232(c)(2)(B), for each and every age-out who is transferred from an ORR placement to ICE, ICE reflects nationwide compliance with section 1232(c)(2)(B). This Court has recognized that class members have no legally protected interest in any *particular* placement. (*See* ECF 50, 35 n.8.) ICE's implementation of the Age-Out Review Worksheet and accompanying documentation process, therefore, provides the exact relief that the Court would order if it were to determine that ICE was failing comply with 8 U.S.C. § 1232(c)(2)(B), with regard to the certified nationwide class. Moreover, because class membership is contingent upon ICE *not* considering placement in the least restrictive setting available, including alternatives to detention programs, as required by 8 U.S.C. § 1232(c)(2)(B), and the preponderance of admissible evidence indicates that ICE is complying with the documentation process JRFMU implemented on October 17, 2018, it is unlikely that the class has sufficient members to maintain class certification. Thus, Plaintiffs are left with an empty (or near empty) class. In light of the new documentation requirements that ICE field personnel have followed since October 17, 2018 (Exs. C, E & F), there should not be future class members joining the certified class, absent an individual error.

The overriding consideration in assessing numerosity is the practicability of joinder. While the numerosity requirement "imposes no absolute limitations," courts in this district have generally

found numerosity satisfied where a proposed class has at least forty members, as the Court did in this case. (*See* ECF No. 50); *see also*, *Taylor v. DC Water & Sewer Auth.*, 241 F.R.D. 33, 37 (D.D.C. 2007). A plaintiff need not provide the exact number of potential class members but must provide a reasonable basis for the estimate provided. “Mere conjecture, without more, is insufficient to establish numerosity.” *Pigford v. Glickman*, 182 F.R.D. 341, 348 (D.D.C. 1998).

In this case, Defendants produced to Plaintiffs almost 600 Age-Out Review Worksheets. Plaintiffs’ counsel took the depositions of ten FOJCs representing a cross section of ICE Field Offices (Chicago, El Paso, Harlingen, Houston, Miami, New York, Phoenix, San Francisco, Seattle, Washington, D.C.). Yet litigation of this motion will reveal that Plaintiffs still cannot meet their continuing burden to provide “a reasonable basis” for any accurate estimate as to the number of class members. Rather, Plaintiffs can *only* prevail if the Court finds that that everyone who is not released upon aging out is a class member, which necessarily requires a finding that that the Age-Out Review Worksheets do not properly document ICE’s consideration of the least restrictive setting available under 8 U.S.C. § 1232(c)(2)(B).⁷

Therefore, because, Plaintiffs can no longer establish either numerosity or commonality as required under Federal Rule of Civil Procedure 23, the Court should decertify the certified class.

II. As for the individuals who aged out *before* October 17, 2018, ICE considered the least restrictive setting available, including alternatives to detention, and continues to detain only 19 of them.

ICE has fulfilled its statutory obligation for all 19 potential class members who were detained prior to ICE implementing its new documentation procedures. *See* Ex C. In her declaration, Chief Harper describes the steps she took to verify that the custody decisions for the 19

⁷ Without question, if the Court’s review of the evidence presented on this Motion, including hundreds of age-out worksheets (to avoid any possibility of cherry-picking evidence) reveals a mistake or failure of documentation in an individual case, or a few cases, this would not be sufficient for numerosity or commonality.

still-detained, potential class members who aged out prior to October 17, 2018, complied with the requirements of 8 U.S.C. § 1232(c)(2)(B). (Ex. C ¶¶ 4-23.) In February 2019, Chief Harper tasked the FOJCs to send JFRMU documentation supporting the detention of those 19 age-outs. (*Id.* ¶ 4.) After reviewing the documentation, Chief Harper attested that, based on her review, ICE considered the least restrictive setting available at the time of the transfer from ORR custody to ICE for each of these individuals after taking into account their danger to community, danger to self, and risk of flight. (*Id.* ¶ 24.) In her declaration, Chief Harper summarized the relevant information in the documents. (*Id.* ¶¶ 5-23.) A review of the summaries reveals a list of criminal activity and risk of flight sufficient to conclude that ICE considered danger and flight risk when making the custody decisions.⁸ (*Id.*) Should the Court nonetheless consider that any of those 19 individuals are class members because the documentation is not adequate to show that ICE considered the least restrictive setting,⁹ that subset is not sufficiently numerous to constitute a class because it is less than half the number of the “at least 40” that this Court has recognized as a presumptive minimum for numerosity. (ECF No. 50 at 59.)

Nor can Plaintiffs meet their burden of establishing commonality between these 19 individuals and any putative class members who aged out following implementation of ICE’s documentation guidance. To the extent that Plaintiffs will contend that the documentation of ICE’s decision-making process on the age-out worksheet is somehow insufficient, claims of inadequate documentation or consideration for these 19 age-outs would lack commonality with claims from

⁸ Even though 8 U.S.C. § 1232(c)(2)(B) only mandates that ICE “consider” the least restrictive setting and does not require “placement” in the least restrictive setting, the documentation for these 19 age-outs confirms that the least restrictive setting for these individuals is indeed adult detention. (Ex. C ¶¶ 5-23.)

⁹ The Court should not second-guess a placement decision because the statutory standard is only that ICE consider the least restrictive setting. As such, if ICE considered the least restrictive setting, even if it did not choose to place the age-out in that setting, ICE has complied with the statute.

individuals who aged out after October 17, 2018 that ICE FOJCs filled out the Age-Out Review Worksheet incompletely or incorrectly. Thus, the 19 individuals detained before October 17, 2018 could not even constitute a subclass, if any class were to remain certified at all.

CONCLUSION

Based on the voluminous evidence attached to this motion documenting ICE's consideration of the factors required by 8 U.S.C. § 1232(c)(2)(B) in age-out custody determinations—flight risk, danger to self, danger to the community, the least restrictive setting available, and alternatives to detention programs—Plaintiffs can no longer meet their ongoing burden to establish the numerosity requirement of Rule 23(a)(1). Also, to the extent that any class members remain of the 19 age-outs who were in ICE detention on October 16, 2018, their claims would lack commonality with individuals who aged out and were detained as adults on or after October 17, 2018 and for whom ICE had completed an Age-Out Review Worksheet. Therefore, the Court should decertify the class in this case.

DATE: April 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE
Civil Action No. 1:18-00508-RC

I HEREBY CERTIFY that on April 1, 2019, a true copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing via e-mail to the following counsel:

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Exhibit A

Filed under
seal

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:18-cv-00508-RC

-----X

WILMER GARCIA RAMIREZ, et al.,

Plaintiffs,

vs.

U.S. IMMIGRATION AND CUSTOMS

ENFORCEMENT, et al.,

Defendants.

-----X

DEPOSITION OF MELLISSA HARPER

Washington, D.C.

Thursday, December 6, 2018

9:00 a.m.

Reporter: Raymond Brynteson, RMR-CRR-RDR

Job No. 12499

Deposition of MELLISSA HARPER

Thursday, December 6, 2018

9:00 a.m.

The deposition of MELLISSA HARPER was held at the offices of Kirkland & Ellis LLP, 655 Fifteenth Street, N.W., Washington, D.C., pursuant to notice, the proceedings recorded stenographically by Raymond G. Brynteson, RMR-CRR-RDR and Notary Public.

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1 immigration since 2001.

2 Q. What is your current title or position
3 with ICE?

4 A. Unit Chief of the Juvenile and Family
5 Residential Management Unit.

6 Q. Sometimes referred to as J-F-R-M-U?

7 A. JFRMU.

8 Q. So when you say "JFRMU," the court
9 reporter will know it's J-F-R-M-U.

10 What is the role or function of JFRMU?

11 A. JFRMU is the headquarters unit that
12 provides oversight, training and guidance for
13 the field and all matters related to aliens that
14 are juveniles, and family detention.

15 Q. Does that include age-outs?

16 A. Yes, it does.

17 Q. And by age-outs, to make sure we're
18 using the same terminology, are you referring to
19 former unaccompanied alien children who are not
20 placed by ORR before their 18th birthday and,
21 therefore, are turned over to the custody of ICE
22 on the 18th birthday?

1 A. Well, I didn't introduce the term. Is
2 that what you are referring to?

3 Q. Yes. Well, I'm asking you, is age-out
4 a --

5 A. You are asking me if that's my
6 definition --

7 Q. Yes.

8 A. -- of an age-out? An age-out is
9 somebody who is a juvenile for care and custody
10 and turns 18 while in their custody and is
11 released to ICE.

12 Q. I think that's what I tried to say.
13 Is age-out a term that you use in your work?

14 A. Yes.

15 Q. And is that the term that you used to
16 former unaccompanied alien children who turn 18
17 without being placed by ORR and are transferred
18 by ORR to the custody of ICE?

19 A. Yes, that's a term that we use.

20 Q. And what are JFRMU's duties and
21 responsibilities with respect to age-outs?

22 A. With respect to age-outs JFRMU

1 provides advice and guidance to the field, if
2 they need -- have any questions about a
3 particular age-out. We provide training through
4 monthly phone calls, the annual FOJC training,
5 which is congressionally mandated, and then any
6 ongoing issues that arise related to UACs.

7 And now we have a tracking mechanism
8 in place to help create a centralized database
9 of documents and paperwork related to age-outs.

10 Q. And that tracking system is new?

11 A. The system is new, yes.

12 Q. You previously tracked out -- tracked
13 age-outs, correct?

14 A. We did track them, yes.

15 Q. You tracked them through a monthly
16 age-out report?

17 A. Yes, an Excel spreadsheet.

18 Q. Did you track them in any other way
19 prior to October 17th of 2018?

20 A. Not that I'm aware of.

21 Q. And the new system that you're talking
22 about, the tracking system, is one that was

1 announced on or about October 17, 2018, correct?

2 A. Yes.

3 Q. Who -- we will go back to that or come
4 back to that here shortly. I want to get the
5 rest of the information about what you do in
6 JFRMU.

7 You described JFRMU --

8 A. "JFRMU."

9 Q. "JFRMU." Why don't I just say
10 J-F-R-M-U.

11 A. It is your choice.

12 Q. Yeah, okay. You described JFRMU's
13 role with respect to age-outs.

14 Does JFRMU do anything else with
15 respect to age-outs other than what you
16 described?

17 A. No. Like I said, we provide guidance
18 to the field. We provide training. We answer
19 questions. And now with the new tracking system
20 we also have a full-time person monitoring the
21 documentation so that we can ensure that the
22 documentation is in place to support a process

1 that we've always done.

2 Q. So the process didn't change with this
3 new tracking system, just the documentation,
4 correct?

5 A. There is no change in the process.

6 Q. Who is the person, the full-time
7 person who is monitoring the new tracking
8 system?

9 A. I have a team of officers, but one
10 particular officer has it as a primary role.
11 Her name is Ana Sanchez.

12 Q. And what is it that Ms. Sanchez is
13 tasked with doing precisely with respect to the
14 new documentation system?

15 A. Well, because we want to ensure that
16 the documentation is there to support the
17 process that the officers go through each time
18 in considering the lease restrictive setting
19 under VAWA, we wanted to make sure that the
20 paperwork was loaded up appropriately where we
21 could access it.

22 So every time that there is a new

1 age-out added to the SharePoint she reviews the
2 paperwork and ensures that the documentation is
3 sufficient. She runs the audit for my review.
4 Approximately 10 percent of the cases a month
5 come to my attention.

6 Of course we just started this so it's
7 a work in progress. And then any case that she
8 has any questions about she follows up with the
9 field.

10 Q. Anything else that Ms. Sanchez does
11 with respect to the new documentation system?

12 A. Not that I can think of right now.

13 Q. You said that she reviews the
14 paperwork for every age-out as it is submitted
15 from the field office. Correct?

16 A. Yes.

17 Q. And what is she reviewing that
18 paperwork for?

19 A. To make sure the forms are filled out
20 correctly, that the A numbers are correct, that
21 the names are correct, making sure that, if the
22 person has any extenuating factors, that those

1 are reviewed and taken into consideration, and
2 to identify any other outlying issues like, say,
3 criminal activity, gang membership, just to make
4 sure that the breadth of all the information
5 that needs to be considered appears to have been
6 considered.

7 She has a lot of experience. It's
8 just another set of eyes.

9 Q. To be clear, by the time she receives
10 this documentation, the field office has already
11 made a decision whether to detain the age-out,
12 correct?

13 A. Right. We have to make a decision
14 based on the information that we have at the
15 time they turn 18.

16 Q. But the decision has already been made
17 by the time the paperwork is submitted to ICE
18 headquarters, correct?

19 A. Yes.

20 Q. So Ms. Sanchez is just checking to
21 make sure that the paperwork for a decision that
22 has already been made is complete and accurate,

1 correct?

2 A. Yes.

3 Q. Now, did you have anyone that played
4 the same role or conducted the same task with
5 respect to the prior monthly age-out reports?

6 A. I did not. I have only been the unit
7 chief since the end of October 2017.

8 Q. During your tenure, was there anyone
9 that checked for the completeness or accuracy of
10 the monthly age-out reports when they were
11 submitted by the field offices?

12 A. We're not checking the accuracy of a
13 monthly report. We're checking the accuracy of
14 the individual records to make sure we have the
15 correct paperwork uploaded.

16 Q. And my -- and is that also true for
17 the work Ms. Sanchez does?

18 A. That is the work that Ms. Sanchez
19 does.

20 Q. She is not checking the accuracy of
21 the decision, but just making sure that the
22 information, such as A number or name, as

1 reported by the field office is correct?

2 A. That's correct. However, if in her
3 experience she saw something that she felt like
4 required additional consideration by me, she can
5 bring that to my attention.

6 Just like when the field asks for help
7 in any JFRMU-related issue, the questions
8 usually get elevated to me to ensure that, you
9 know, everything is in compliance.

10 Q. So if there is a question about the
11 form, a question about policy, and Ms. Sanchez
12 learns about that, she will report that up to
13 you, correct?

14 A. Right. She could also report to me if
15 she felt like new information had been obtained
16 or there was information that she would think
17 should be considered in the determination
18 whether to -- a person should have been in
19 custody or perhaps an alternative form of
20 detention could be applied.

21 Q. Has that ever happened so far?

22 A. Not so far, but we've only been doing

1 it about five weeks.

2 Q. Five weeks. I thought you started --
3 and maybe my math is wrong -- you started this
4 in mid October, correct, on or about October
5 17th?

6 A. 17th or 18th, yes.

7 Q. Whatever that is.

8 A. Six weeks.

9 Q. I'm not going to quibble with you.
10 But at least during that period Ms. Sanchez has
11 not come to you and said, hey, I think there is
12 a mistake or I think there is information that
13 should have been considered by the field office
14 that wasn't, correct?

15 A. No, but this process has been a
16 continuous ramp-up. So first we worked on the
17 standardized sheet and then we implemented the
18 SharePoint system. And as it has been rolled
19 out to the field, we've been continuing to
20 improve the process as it is.

21 So, so far no, but because we haven't
22 made any changes in the policy, the law hasn't

1 changed and the officers for the most part have
2 been doing this, they have a lot of experience,
3 I wouldn't expect mistakes from the field very
4 often.

5 Q. But, again, to be clear, at least to
6 date Ms. Sanchez hasn't reported any mistakes
7 from the field or anything that she thinks
8 requires additional consideration, or that
9 wasn't considered and should have been
10 considered, correct?

11 A. She has not brought any of those cases
12 to my attention.

13 Q. And, again, to be clear, there was no
14 change in policy that accompanied this new
15 documentation, correct?

16 A. No.

17 Q. Now, let's go back to the former
18 age-out, monthly age-out reports.

19 Did anyone at ICE review the accuracy
20 or completeness of those reports as they were
21 submitted by the field offices?

22 A. No, because those were spreadsheets.

1 couple of iterations with OPLA, and I reviewed
2 it at different times as it relates to being
3 crafted.

4 Q. When did you decide to adopt this new
5 system and create this worksheet?

6 A. Well, when I first entered on duty as
7 the unit chief 13 months ago, one of the things
8 that I noticed right away was that they needed a
9 lot more I felt like data quality. We call it
10 data quality and integrity.

11 So I felt like there were programs out
12 there and a lot of work was being done but it
13 wasn't always documented really well. So over
14 time I've been implementing data quality checks
15 in different aspects of the program.

16 So this is one of the ones that was on
17 our radar, and we talked about it some, and then
18 we finally worked it out sometime back in
19 October, I think.

20 Q. When did you start working on this
21 form and this new documentation system?

22 A. Maybe in August I had -- I had an

1 employee that -- not a contract employee, but
2 she learned how to do SharePoint, and so we had
3 the idea that between a worksheet and a
4 SharePoint we should be able to visually track
5 the information a lot better.

6 Q. What was the name of that employee?

7 A. Kyla Voit, V-o-i-t. She is a
8 contractor.

9 Q. Did a contractor help develop the
10 SharePoint site in this worksheet?

11 A. Not the worksheet.

12 Q. What about the SharePoint site?

13 A. Yes.

14 Q. Who was the contractor?

15 A. Her.

16 Q. And what company or what firm was she
17 with, or is she with?

18 A. She's with Capgemini.

19 Q. And they are an outside provider to
20 ICE for a number of different services, correct?

21 A. Yes.

22 Q. Consulting services. Was she assigned

1 Q. Let me direct your attention to the
2 first page of the worksheet, which is the fifth
3 page of Plaintiff's Exhibit 3.

4 And specifically the last sentence of
5 the first paragraph: "Please complete the
6 worksheet for each former UAC who has aged out
7 of HHS ORR custody and who is being or has been
8 transferred to ICE ERO custody."

9 Do you see what I'm referring to
10 there?

11 A. Yes.

12 Q. Is that an accurate statement in terms
13 of the former UACs or age-outs for whom this
14 form is to be completed?

15 A. Yes.

16 Q. When it refers to age-outs who have
17 been transferred to ICE custody, I think we've
18 talked about that before, those are folks that
19 weren't placed by ORR and they are or have or
20 are about to turn 18, correct?

21 A. Yes.

22 Q. But this also refers to age-outs who

1 are being transferred, if I'm reading right, who
2 is being or has been transferred, and maybe I'm
3 reading this over-technically.

4 Who is the -- who is being referred to
5 in the clause "who is being transferred to ICE"?
6 Anyone other than the group that we just
7 described?

8 A. Well, that would be any former UAC
9 because they are not UACs when they turn 18, and
10 then who is being transferred to ICE ERO
11 custody.

12 Q. So it's somebody who is in the process
13 of being transferred or has just recently been
14 transferred?

15 A. Yes.

16 Q. But in all cases this form is to be
17 completed for former UACs who have aged out and
18 are in or in the process of being in ICE's
19 custody?

20 A. I'm sorry, can you repeat the first
21 part of your question?

22 MR. PATTON: Please read it back.

1 THE REPORTER: "Question: But in all
2 cases this form is to be completed for former
3 UACs who have aged out and are in or in the
4 process of being in ICE's custody?"

5 THE WITNESS: Well, the form isn't
6 retroactive. It's for people that are aging out
7 and coming into ICE custody.

8 BY MR. PATTON:

9 Q. Does the form apply to age-outs who
10 are released before they come into ICE's
11 custody?

12 A. No, because that wouldn't be an
13 age-out.

14 Q. Let me direct your attention to the
15 next page, to item 8, or question 8: "Is this
16 age-out a flight risk, danger to the community,
17 or danger to themselves?" And then there is a
18 box yes and a box no.

19 Do you see what I'm referring to?

20 A. I do.

21 Q. Did you consider separating out the --
22 well, strike that.

1 Is it correct that those are the three
2 factors that are identified in VAWA or Section
3 1232(c)(2)(B)?

4 A. Those are the factors that are
5 specifically delineated, yes.

6 Q. Did you consider separating out those
7 three factors individually and asking questions
8 as to each?

9 A. I believe that this question came from
10 the old form but, as I said, I have one
11 particular officer who is assigned to review the
12 SharePoints continually. And she had discussed
13 with me over the course of last week and then --
14 that she felt like some of the questions should
15 be reworked.

16 And since we're trying to make this
17 the clearest and best source of documentation of
18 the officers' work, we talked about reworking a
19 few of these questions and sort of making it a
20 little clearer for the officers.

21 Q. So is this a question that you talked
22 about reworking?

1 anything that falls within the broad spectrum of
2 the VAWA language, which is supervised group
3 homes, organizational sponsors and other kinds
4 of placement.

5 Q. On item 12, that reads "are any
6 individual or organizational sponsors or
7 supervised group homes available to the age-out
8 for placement?" Correct?

9 A. Yes, that's what it says.

10 Q. What is your understanding as to the
11 meaning of what "available" means in that
12 question?

13 A. Available would mean that a program
14 had a spot available and set aside for that
15 age-out.

16 Q. Anything more than that?

17 A. I mean, do you have a specific
18 question?

19 Q. Well, if you look at the note under
20 that it says: "If no, briefly explain in the
21 remarks which of these options were evaluated
22 and why they were not used."

1 A. Uh-huh.

2 Q. Which, I understand your definition of
3 the word available, if I just read the question
4 that's what I would think, hey, is it available,
5 can the age-out or the UAC be a part of the
6 program?

7 But the note makes this suggest that
8 what this form is asking for, yeah, there was
9 some program that somebody recommended, ORR, the
10 attorney, but the deportation officer said, no,
11 it's not available, as I view availability, and
12 then they have to explain why they rejected
13 that.

14 A. Right.

15 Q. Am I misreading the import of this
16 question when you consider it with the comment
17 below it or the note below it?

18 A. So this particular question relates to
19 the follow-up of the post-18 plan. Was anything
20 recommended or put in place by ORR for this
21 age-out? Yes or no. If no --

22 Q. Do you see the note?

1 A. Yes, then briefly explain in the
2 remarks which of these options were evaluated
3 and why they were not used.

4 Q. So this at least means to me that
5 there could be an alternative, a less
6 restrictive setting that was available, even
7 recommended by ORR. The deportation officer
8 says no, checks no.

9 And this is saying, if you check no,
10 explain why that option was evaluated and they
11 were not used or approved?

12 A. Well, two comments: One, I think that
13 we should reword this question in an effort to
14 better document our work on the UAC age-out
15 process.

16 But essentially if an organization was
17 available or a supervised group home was
18 available and the FOJC decided not to use that
19 or the supervisor did, then we would want them
20 to explain why they eliminated that possible
21 un-discretionary form of an alternative to
22 detention.

1 The purpose of the form is to try and
2 ensure that the officers have exercised all the
3 discretion available to them and made the best
4 decision possible.

5 So that's why that question is in
6 there, to make them explain why they didn't
7 accept or go with the recommended placement.

8 Q. But the question acknowledges that,
9 just because there is a least restrictive
10 setting available, doesn't mean that the officer
11 has to approve that. The officer can still say
12 no and explain why. Correct?

13 A. Well, that's not actually what the
14 question says.

15 Q. But is that the intent or purpose
16 behind the question when read with the note
17 underneath it?

18 A. I believe it is the intent of the
19 question but that is actually not what the
20 question says.

21 Q. I agree with you. So this is another
22 one that you are going to add to your list as

1 potentially considering for revision?

2 A. Yes, but I would still keep the part
3 where the officers say why a particularly
4 available program was not -- why they didn't,
5 you know, avail the UAC of that program. So
6 that it causes them to think and apply the
7 standards that are required under VAWA.

8 Q. I'm going to ask you some questions
9 about the monthly age-out report and some
10 changes that were made in January of 2018 to
11 that report.

12 Do you recall that occurring, that
13 there were changes that were made to the age-out
14 report earlier this year?

15 A. I think we changed some of the
16 categories, yeah, I think we added some
17 categories for additional clarity.

18 MR. PATTON: Please mark this as
19 Exhibit 4.

20 (Deposition Exhibit Number 4 was marked for
21 identification.)

22 BY MR. PATTON:

1 A. It was for November, well, since we
2 started.

3 Q. How many age-outs have you had since
4 you started with the new documentation, the new
5 SharePoint system?

6 A. 234.

7 Q. And how many of those 234 have been
8 detained?

9 A. I don't remember any longer. I think
10 it was about the same as always. I think it was
11 in the 60 percent area, I think. I think our
12 historical number is about 53 percent. I think
13 that's the overall historical number.

14 Q. 53 percent or 63 percent? I'm sorry,
15 I just didn't hear you.

16 A. I think the average is 53 percent, but
17 I'm not sure.

18 Q. Okay. When you say you think the
19 average is 53 percent, over what time period are
20 you referring to?

21 A. From the time period that we have
22 data, which I believe they started the reports I

1 believe in the beginning of 2016.

2 Q. During the 13 months that you've been
3 unit chief, what has been the approximate
4 percentage of total age-outs that were detained?

5 A. I'm not really sure. I think it has
6 always been around 60 percent or so, but I can't
7 say for sure. You probably have the reports
8 more readily available than I do.

9 Q. Don't necessarily assume that.

10 A. A lot of these reports, you know, they
11 go into my mailboxes, and I intend to look at
12 them and I don't have time but, yes, I am copied
13 on all of them.

14 Q. Do you intend to continue to receive
15 and monitor similar monthly summaries of number
16 of age-outs and the number detained and released
17 under the new documentation system?

18 A. Yes.

19 Q. And did you -- was yesterday -- or I
20 can't remember when you said you looked at this,
21 I thought it was yesterday -- part of that
22 effort to monitor age-out statistics under the

1 new system?

2 A. No, I was looking at it the other day,
3 I think since the beginning of this week,
4 because we wanted to know how many people had
5 aged out since the program new process was put
6 in place.

7 And we were looking at whether or not
8 the appropriate documents had been uploaded.
9 And so I had an entire spreadsheet of
10 information that I was asking Ana Sanchez about.

11 Q. Okay. And what did that information
12 show with respect to the uploading into the
13 SharePoint system of information concerning
14 these 234 age-outs?

15 A. So there was worksheets uploaded for
16 all of the 234, except for seven, and Ana spoke
17 to the FOJCs that had done those seven, and they
18 had the sheets but they had not yet gotten
19 access to the SharePoint.

20 Q. And why had they not received access
21 to the SharePoint?

22 A. Because in the beginning of fiscal

1 years, and then in the months following that,
2 field officers have often a rotation of
3 assignments, and it just happens to fall on
4 fiscal years. It's just easier that way.

5 They have a rotation in the
6 assignments for officers. They go from one unit
7 to another, and some officers. So some of them
8 were new FOJCs that hadn't made it onto the
9 distribution list yet, and then others were it
10 seemed dropped off when the SharePoint was moved
11 from one ICE server to the next server.

12 So one day we came in and we couldn't
13 get on the SharePoint. And the Capgemini team
14 called the IT Department, and they said they had
15 moved servers and they would have to change some
16 language so we could get it again.

17 Q. Do FOJCs rotate on some kind of a
18 periodic basis?

19 A. It's supposed to be at least a year.
20 I asked for two years now that I'm in the
21 position and I see the specialized training
22 involved, but that's totally up to the field

1 office director.

2 Q. Do FOJCs receive any formal training
3 when they are named FOJCs?

4 A. Well, when they are first named FOJCs
5 they are trained by the outgoing FOJC. And then
6 they have access to our website, which is part
7 of the ICE website, and the handbook is on
8 there.

9 There is some training guides on
10 there, interactive training, that they can go
11 through and take a test and make sure that they
12 know the basics.

13 And then they come to the national
14 training when we have that. And they are on all
15 of the monthly calls that we have and on my
16 distribution list for -- to receive materials
17 sent out from my unit.

18 Q. But if I understand your testimony
19 correctly, there is no training program or
20 session that is provided to new FOJCs at or
21 about the time they become FOJCs, is that
22 correct?

1 A. It could be either way, depending on
2 the way that the particular ORR program works
3 and the relationship that is in place with the
4 ICE officer.

5 So sometimes they are detained for a
6 short period of time and then released to that
7 facility, or sometimes ORR will have ICE or
8 allow ICE to do the paperwork ahead of time and
9 then they can go right from the ORR shelter to
10 the other program.

11 Q. Okay. I want to ask you a little bit
12 about age-outs since the October 17th transition
13 to documenting it in the new way.

14 Remind me how many -- Mr. Patton asked
15 you this question -- remind me how many age-outs
16 there have been since October 17, 2018?

17 A. Through December 3rd there were 234.

18 Q. And for how many of those people did
19 ICE consider the least restrictive setting
20 available prior to making a detention or release
21 decision?

22 A. For all of those people.

1 Q. And for all -- for the 234 people, how
2 many of those people had proper documentation
3 uploaded to the SharePoint website?

4 A. All but seven had the worksheet
5 uploaded, and the seven, the worksheets are
6 done, my officers have been in contact with them
7 and they are just giving them access to upload
8 the documents.

9 Q. And were these 234 from all different
10 field offices across the country? I mean, was
11 this dispersed across the country?

12 A. It was dispersed across, I think, 16
13 -- 15 or 16 field offices.

14 Q. Okay. How many field offices does ICE
15 have?

16 A. 24.

17 Q. And of the 24 field offices, how many
18 of those field offices have an ORR shelter under
19 that area of responsibility?

20 A. About the same number I would say.
21 About maybe 16.

22 Q. 16?

1 A. 17, 15, right around there.

2 Q. So do you get age-outs from the
3 remainder where there isn't a shelter?

4 A. No.

5 Q. So if I can ask you about Boston, for
6 example. Is there an ORR shelter in Boston?

7 A. I don't believe so.

8 Q. Do you ever get age-outs from Boston?

9 A. Not that I'm aware of.

10 Q. So what percentage of the field
11 offices that have a shelter and have age-outs
12 are reporting in when they get age-outs to the
13 SharePoint website?

14 A. All of them.

15 Q. How do you know it is all of them?

16 A. Because that's the way that we train
17 them and that's the way that we expect them to
18 do their duties.

19 Q. And do they generally comply with what
20 you told them to do?

21 MR. PATTON: Objection.

22 THE WITNESS: Absolutely.

1 A. I mean, I think that sometimes happens
2 in life, yes.

3 Q. In any event, is there any other basis
4 for your testimony that the less restrictive
5 setting was considered in all these cases other
6 than your belief that, well, that's what we tell
7 them to do so they must have done it?

8 A. Yes, because they have gone through
9 and completed the worksheet and identified all
10 of the factors that were involved in taking --
11 in making their decision.

12 Q. Any other basis for that testimony?

13 A. No.

14 Q. And what are the particular answers to
15 the worksheet that you are relying on when you
16 say -- testified that in all cases the
17 deportation officer must have considered the
18 least restrictive setting?

19 A. So all of these questions are factors
20 in determining the appropriate setting or
21 placement of an age-out, including what would
22 naturally be the least restrictive setting of

1 any spectrum.

2 So in addition to all of these
3 factors, question 15 says detention decision
4 considering the least restrictive setting
5 available.

6 So even at the end by signature they
7 have to attest that they have considered it.

8 Q. You also testified or gave the opinion
9 that since October 17, 2018, there have been no
10 class members. Do you recall that?

11 A. There have been no new class members.

12 Q. Yes. Do you recall that testimony?

13 A. I do.

14 Q. And was your basis for that testimony
15 the same as that you've just described, that
16 that is what you tell the deportation officers
17 to do so they must have done it, number 1, and,
18 number 2, there was a completed worksheet for
19 each of those 234 persons?

20 A. Well, in addition to those two
21 factors, the FOJCs in the field have been doing
22 this process for a long period of time, ever

1 since the inception of the VAWA requirement.

2 So I don't see any reason why they
3 would not continue to do their job the way that
4 they have done it before successfully.

5 Q. So the third reason you are giving is
6 that you believe that the field officers have
7 always complied with Section 1232(c)(2)(B) so
8 you assume they have continued to comply with it
9 as to these 234 new age-outs since October 17,
10 2018, correct?

11 A. Yes. And now they have documentation
12 to support the work that they do in evaluating
13 these decisions.

14 Q. Do you know the circumstances of any
15 of those 234 individual age-outs, the facts and
16 circumstances of the particular age-outs?

17 A. I think one was a rapist, but other
18 than that.

19 Q. The answer is no?

20 A. Right.

21 Q. And did you talk to any of the
22 individuals who made those custody decisions as

1 to those 234 age-outs?

2 A. No, I haven't talked to them.

3 Q. Did you review any of the
4 documentation on the share site with respect to
5 any of those 234 individual age-outs?

6 A. I have reviewed some of the
7 SharePoints. I have officers that are reviewing
8 it and I have one dedicated officer that reviews
9 it all the time.

10 Q. Not my question.

11 In giving your opinion that there are
12 no class members and that there is 100 percent
13 compliance, as to the 234 age-outs sent October
14 17, 2018, did you review any of the
15 documentation with respect to any of those
16 age-outs?

17 A. I have reviewed some documentation but
18 not all of it.

19 Q. What documentation did you review?

20 A. Just some of the miscellaneous
21 worksheets that were brought to me to look at.

22 Q. Did you even review the worksheets for

1 all 234 or did someone else do that?

2 A. No, my officer does that.

3 Q. But the basis for your testimony is
4 you have been told by Ms. Sanchez that an
5 age-out sheet was completed for each of those
6 234, correct?

7 A. That the process has been documented
8 for all 234, that's correct.

9 Q. A sheet was filled out, right?

10 A. The sheet documenting the process was
11 in existence, was completed, that's right, yes.

12 Q. What about any of the age-out
13 decisions that were made after you became the
14 unit chief and before October 17, 2018, do you
15 know any of the facts and circumstances of those
16 individual age-outs?

17 A. Just some of the ones that have been
18 brought up in different depositions and things
19 like that.

20 Q. Have you talked to the officers in the
21 field who made the custodial decisions as to any
22 of those age-outs?

1 A. I have talked to officers about cases
2 when they have called to discuss them with me,
3 yes.

4 Q. But other than that, have you talked
5 to the officers that made the decisions in the
6 field as to whether to detain age-outs during
7 that period?

8 A. I have talked to the ones that have
9 called me.

10 Q. To ask a question?

11 A. To ask questions about particular
12 cases, yes.

13 Q. Have you reviewed any of the
14 documentation as to any of those individual
15 age-outs during the period from the fall of 2017
16 when you first became unit chief until October
17 17 of 2018?

18 A. Only in like if somebody contacted me
19 and then sent me forward paperwork to look at,
20 then I would have reviewed it.

21 Q. But only in those circumstances?

22 A. Well, those are the only circumstances

1 I could do that in, because this is an ongoing
2 daily activity. Prior to this I didn't have all
3 of the documentation.

4 Q. So you couldn't have reviewed it even
5 if you had wanted to, correct?

6 A. If I had wanted to, I could have asked
7 for it.

8 Q. But you didn't?

9 A. I didn't because I'm not -- I can't
10 track every single age-out in the country by
11 myself.

12 Q. But I think you testified that one of
13 the reasons why you assume that there has been
14 100 percent compliance with the statute since
15 October 17 of 2018 is because you believe there
16 was 100 percent compliance before, right? Isn't
17 that your testimony?

18 A. I believe that the FOJCs have always
19 considered the least restrictive setting as
20 required by VAWA.

21 Q. And my question is, that as to any of
22 those age-outs as to which custody decisions

1 were made, after you became unit chief and
2 before October 17, 2018, did you review any of
3 the documentation concerning any of those
4 age-outs except in the rare occasion when
5 someone asked you a question about a particular
6 case?

7 A. No.

8 Q. And did you talk to the detention
9 officers that made those age-out decisions
10 during that period except in the rare
11 circumstance where somebody raised a question
12 about a particular case?

13 A. We don't have detention officers.

14 Q. Deportation officers.

15 A. No, I speak to them when they call me
16 and ask me for advice or questions.

17 MR. PATTON: I have nothing further.

18 MR. KISOR: Me neither.

19 (Whereupon, at 3:47 p.m., reading and
20 signing not waived, the deposition was
21 concluded.)
22

Exhibit C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Wilmer Garcia Ramirez, <i>et. al.</i> ,)	Case No.: 1:18-cv-00508
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
U.S. Immigration and Customs Enforcement,)	
<i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	

DECLARATION OF MELLISSA B. HARPER

I, Mellissa B. Harper, hereby make the following declaration with respect to the above-captioned matter:

1. I am the Chief of the Juvenile and Family Residential Management Unit (JFRMU), Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). JFRMU addresses issues regarding unaccompanied alien children (UAC) and alien family groups who come into ERO custody. JFRMU develops policies sensitive to the various vulnerabilities and needs of these populations. JFRMU also trains, monitors, and advises ERO Field Office Juvenile Coordinators (FOJCs). These officers serve as their field offices' subject matter experts on juvenile and family matters. As JFRMU advises FOJCs, they in turn advise colleagues who encounter minors, families, and UAC during enforcement activities.

2. The statements contained in this declaration are based on my personal knowledge and experience, upon information provided to me in my official capacity, and upon conclusions and determinations made in accordance therewith.

3. On October 17, 2018, ERO implemented a new procedure for documenting and tracking its custody determinations for former UAC who have turned 18 while in Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) custody, commonly referred to as “age-outs.” *See* Memorandum from Tae D. Johnson, Assistant Director for Custody Management, ERO, to Field Office Directors and Deputy Field Office Directors (Oct. 17, 2018), provided as Ex. A. The new process helps document contemporaneously the work that the Field Offices already do in considering the least restrictive settings for age-outs, taking into account danger to self, danger to community, and flight risk. It requires, among other items, that FOJCs complete an ERO Age-Out Review Worksheet for every former UAC who ages out on or after October 17, 2018.

4. To help memorialize the custody determinations made prior to the new policy, I asked the FOJCs to send JFRMU documentation that supported the decisions to detain former UACs who aged out prior to October 17, 2018. As of March 28, 2019, there are 19 age-outs in ICE custody who were in custody on August 30, 2018, or who were detained upon aging out of ORR care between August 30 and October 16, 2018, inclusive. The documents pertinent to the custody determinations provided by the FOJCs are submitted with this declaration as Exhibits 1 through 19. Current case status information was also collected from DHS databases. Below are summaries of the relevant information contained in the documentation and databases for each of the 19 age-outs who remain in ICE custody as of March 28, 2019.

5. On December 18, 2016, former UAC E.H., alien number ***-**7-797, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 1. E.H. initially entered ORR custody in late June 2015. In October 2015, E.H. admitted to membership in the MS-13 gang and claimed that he had participated in five murders in El Salvador, including personally

shooting four people and stabbing another. During his time in ORR custody, E.H. accrued several Significant Incident Reports for behavioral issues, self-harm, and assaults on staff members and other juveniles. ORR denied his maternal aunt's sponsorship application based on her inability to supervise him and provide a safe and stable environment. Upon E.H.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, and determined that E.H. posed a danger to the community and to himself. ICE therefore detained E.H. at the Batavia Service Processing Center in New York. On December 21, 2017, an Immigration Judge ordered E.H. removed from the United States. On June 22, 2018, the Board of Immigration Appeals (BIA) dismissed E.H.'s appeal of the Immigration Judge's decision. E.H.'s petition for review of his final order of removal is pending before the United States Court of Appeals for the Second Circuit.

6. On January 3, 2017, former UAC O.M., alien number ***-**4-636, was convicted as a juvenile of robbery in the second degree and sentenced to 365 days imprisonment. *See Ex. 2.* The jail identified him as a member of the MS-13 gang. O.M. entered ORR custody on March 7, 2017. On April 27, 2017, O.M. turned 18 years of age and was transferred to ICE custody. Upon his transfer, ICE considered the least restrictive settings available, determined that O.M. posed a danger to the community, and detained him at the Northwest Detention Center in Washington. On September 5, 2017, an Immigration Judge also found O.M. to be a danger to the community and denied his request for bond.

7. On January 26, 2017, an Immigration Judge ordered former UAC L.C., alien number ***-**6-331, removed *in absentia*. *See Ex. 3.* On April 7, 2017, police encountered L.C. during a traffic stop. L.C. lied to the police officers about his relationship to one of the other passengers in the vehicle. L.C. had run away from his ORR-approved sponsor, and was

subsequently returned to ORR custody via ICE. On September 23, 2017, L.C. aged out of ORR custody and was transferred to ICE custody. Upon his transfer, ORR reported that L.C. had drug and alcohol addictions and fraternized with alleged gang members. ICE considered the least restrictive settings available and determined that L.C. posed a flight risk in light of his prior flight from his ORR sponsor. ICE detained him at the York County Prison in Pennsylvania. On March 27, 2018, an Immigration Judge again ordered L.C. removed from the United States. On August 27, 2018, the BIA dismissed L.C.'s appeal of the Immigration Judge's removal order. On September 11, 2018, L.C. filed a petition for review of his final removal order with the United States Court of Appeals for the Third Circuit. On December 28, 2018, the court of appeals stayed his removal pending its adjudication of the appeal.

8. In late May 2017, former UAC K.D., alien number ***-***3-534, entered ORR custody. *See* Ex. 4. During his time in ORR custody, ORR transferred K.D. to progressively more restrictive settings: first from a shelter to a staff-secure facility, and then from the staff-secure facility to a secure facility in Virginia. While in ORR custody, K.D. was verbally aggressive toward facility staff and claimed affiliation with the MS-13 gang and involvement in a plot to kill his cousin. Upon his transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available and determined that he posed a danger to the community. ICE therefore detained him at Immigration Centers of America-Farmville in Virginia. On April 24, 2018, while in custody at Farmville, K.D. received a disciplinary order as a result of gang activity. On February 15, 2019, an Immigration Judge granted K.D.'s application for asylum. DHS filed an appeal of the Immigration Judge's decision to the BIA.

9. On November 18, 2017, former UAC J.M., alien number ***-***7-299, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 5. He originally entered ORR

custody on May 1, 2016, and was subsequently released to the care of his uncle. On March 17, 2017, J.M. was arrested by a local police department on charges of rape in the first degree and two counts of sex offense in the first degree, all against a 14-year-old victim. Those charges were not prosecuted. On May 8, 2017, ICE apprehended J.M. upon learning of four new charges: two charges of distribution of child pornography and two charges of possession of child pornography. ICE transferred him to ORR custody in accordance with the requirements of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457 (Dec. 23, 2008) (TVPRA). J.M. later pled guilty to possession of child pornography. On November 15, 2017, an Immigration Judge denied J.M.'s motion for custody redetermination under *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017). Upon J.M.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, determined that J.M. posed a danger to the community, and detained him at the Worcester County Detention Center in Maryland. On November 6, 2018, an Immigration Judge denied J.M.'s requests for relief from removal and ordered J.M. removed from the United States. His appeal to the BIA is pending.

10. On February 25, 2018, former UAC N.B., alien number ***-**8-529, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 6. In the approximately 18 days that N.B. spent in ORR custody, ORR did not identify a potential sponsor for N.B. or provide a Post-18 Plan. ORR reported that N.B. had a history of self-harm and suicide attempts and lacked family or community ties in the United States. Upon N.B.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available and determined that N.B. posed a flight risk and a danger to himself and therefore detained him at the Northwest Detention Center in Washington. On March 21, 2018, an Immigration Judge held a bond hearing, found N.B. to be a flight risk, and denied N.B.'s bond request.

11. On March 15, 2018, former UAC J.E., alien number ***-**0-011, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 7. ORR had previously released J.E. to a sponsor in June 2016. On February 7, 2017, J.E. was arrested in New York on two charges of felony robbery and one of misdemeanor assault. He subsequently was convicted of robbery in the second degree as a youthful offender and sentenced to one to three years' incarceration. On February 5, 2018, he returned to ORR custody. Upon his transfer to ICE custody, ICE considered the least restrictive settings available and determined that J.E. posed a danger to the community; ICE therefore detained him in the Contra Costa West County Detention Facility in California. On May 29, 2018, an Immigration Judge denied J.E.'s request for bond.

12. On April 27, 2018, former UAC M.C., alien number ***-**5-815, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 8. Previously, ORR had released M.C. to a sponsor in October 2013. On June 22, 2017, the Las Vegas Police Department arrested M.C. on charges of kidnapping, sexual assault against a victim under 16 years of age, and conspiracy to commit each of those crimes. He was tried as an adult and convicted of conspiracy to commit a crime on February 28, 2018; he was sentenced to 364 days' incarceration. Upon M.C.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, determined that M.C. posed a danger to the community, and detained him in Yuba County Jail in California. On June 12, 2018, an Immigration Judge denied M.C.'s request for bond.

13. On August 17, 2018, former UAC J.E., alien number ***-**0-645, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 9. In the approximately five months between J.E.'s entry into ORR custody on March 8, 2018, and his transfer to ICE, ORR was unable to release him to any sponsors. Upon J.E.'s transfer to ICE custody, ICE considered the

least restrictive settings available, and determined that he would be detained at the Houston Contract Detention Facility in Texas. Less than three months later, on November 6, 2018, an Immigration Judge ordered J.E. removed from the United States. J.E.'s appeal of the Immigration Judge's removal order is pending before the BIA.

14. On June 26, 2018, former UAC M.G., alien number ***-**1-112, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 10. M.G. originally entered the U.S. without inspection in July 2016. At that time, he was apprehended by the U.S. Border Patrol and transferred to ORR, which released him from its custody on August 3, 2016. On April 27, 2018, M.G. was arrested in Pitt County, North Carolina, on charges of simple assault against his mother. On May 24, 2018, he was released from the Pitt County Detention Center to ICE, which transferred him to ORR as a UAC pursuant to the requirements of the TVPRA. Upon M.G.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, determined that M.G. posed a flight risk, a danger to himself, and a danger to his mother, and detained him in Hudson County Jail in New York. On July 19, 2018, ICE attempted to enroll M.G. in its Alternatives to Detention (ATD) program, but was unable to do so because M.G. was physically combative during enrollment and refused to sign the participation agreement. On October 18, 2018, ICE transferred M.G. to an inpatient mental health care facility in South Carolina, where he remains in ICE custody.

15. On July 15, 2018, former UAC S.L., alien number ***-**3-920, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 11. During the approximately three months that he was in its custody, ORR was unable to approve a sponsor or other place of residence for S.L. in the United States. Upon S.L.'s transfer to ICE custody, ICE considered the least

restrictive settings available, determined that he posed a flight risk, and detained him at the Houston Contract Detention Facility in Texas.

16. On July 24, 2018, former UAC M.M., alien number ***-**3-839, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 12. Previously, on December 23, 2016, ORR had released M.M. to the care of his sister. On March 16, 2018, M.M. was arrested by the Martin County Police Department in Florida on charges of felony larceny and misdemeanor resisting arrest. On March 18, 2018, the Martin County Police Department again arrested M.M., this time on charges of felony battery by strangulation against his sister and misdemeanor resisting arrest. On April 9, 2018, M.M. was transferred via ICE to ORR pursuant to the requirements of the TVPRA. While in ORR custody, M.M. accrued several Significant Incident Reports for fighting and running away, including an escape from a secure facility on July 12, 2018. Upon his transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, determined that he posed a flight risk and a danger to the community, and detained him in Immigration Centers of America-Farmville in Virginia.

17. On August 7, 2018, former UAC P.L., alien number ***-**1-836, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 13. P.L. had been in ORR custody since July 22, 2017, two days after his apprehension by the U.S. Border Patrol. During P.L.'s 382 days in an ORR placement, ORR was unable to identify a viable sponsor. Upon P.L.'s transfer to ICE custody, ICE considered the least restrictive settings available and determined he was a significant flight risk. ICE therefore detained him at the Eloy Detention Center in Arizona.

18. On August 26, 2018, former UAC E.L., alien number ***-**4-001, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 14. Previously, in November 2016, ORR had released E.L. to the care of his brother. On July 27, 2017, E.L. failed to appear for a

hearing in Immigration Court. The Immigration Judge ordered him removed *in absentia*, as required under 8 U.S.C. § 1229a(a)(5)(A). On August 5, 2018, the Panola County Sheriff's Office in Mississippi arrested E.L. on charges of driving without a license. He subsequently was transferred to ORR via ICE, pursuant to the requirements of the TVPRA. Upon E.L.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, and determined that E.L., a former fugitive with a court-issued final order of removal, was subject to mandatory detention and detained him in the Hudson County Correctional Facility in New York.

19. On September 20, 2018, former UAC R.M., alien number ***-**-4-669, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 15. R.M. had been in ORR custody for one day, and ORR was unable to identify any potential sponsors. Upon R.M.'s transfer to ICE custody, ICE considered the least restrictive settings available, noted that she had minimal equities and no family or community ties in the U.S., and determined that she posed a flight risk. ICE therefore detained her in the El Paso Service Processing Center in Texas. On January 22, 2019, an Immigration Judge determined that R.M. posed a flight risk and denied her request for release on bond.

20. On September 21, 2018, former UAC L.O., alien number ***-**-2-037, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 16. L.O. had been in the United States and in ORR custody since August 19, 2018. Upon L.O.'s transfer to ICE custody, ICE considered the least restrictive settings available, determined that L.O. posed a flight risk and a danger to himself, and therefore detained him in the Northwest Detention Center in Washington. On December 11, 2018, an Immigration Judge also determined that L.O. posed a flight risk, citing his attenuated relationship with his proposed sponsor, and denied L.O.'s request for release on bond.

21. On September 29, 2018, former UAC M.O., alien number ***-**-0-425, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 17. M.O. had been in ORR custody since July 20, 2018. In the approximately two months that M.O. was in ORR custody, ORR identified a potential sponsor, but that person failed to provide a plan for M.O.'s care. Upon M.O.'s transfer to ICE custody when he turned 18, ICE considered the least restrictive settings available, the ORR Post-18 Plan, that M.O. had been in the United States for only two months, and that only temporary shelter housing was available. Implicit in these considerations was that M.O., lacking a fixed, stable in the United States, and having spent only two months in the United States, would be a danger to himself and a flight risk. ICE therefore detained him at the Northwest Detention Center in Washington.

22. On October 16, 2018, former UAC S.S., alien number ***-**-6-373, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 18. S.S. had been in the United States and in ORR custody for three days, and did not provide a viable release address. Upon his transfer to ICE custody, ICE considered the least restrictive settings available and determined that S.S. posed a danger to himself and a flight risk. ICE therefore detained him in the Orange County Sheriff's Department Theo Lacy Facility in California. On December 11, 2018, an Immigration Judge denied S.S.'s request for release on bond, finding S.S. a flight risk. On January 15, 2019, an Immigration Judge ordered S.S. removed from the United States. S.S.'s appeal of the Immigration Judge's decision is pending before the BIA.

23. On October 16, 2018, former UAC A.R., alien number ***-**-0-062, aged out of ORR custody and was transferred to ICE custody. *See* Ex. 19. A.R. had been in ORR custody since May 11, 2018. In the approximately five months that A.R. was in ORR custody, all potential sponsors either withdrew their sponsorship applications or failed to meet ORR's

requirements. Upon A.R.'s transfer to ICE custody, ICE considered the least restrictive settings available and determined that A.R. posed a danger to himself and a flight risk. ICE therefore detained him in the Houston Contract Detention Facility in Texas.

24. In reviewing the records relating to the 19 individuals listed above, I have examined each of their cases and can attest that, at the time of their transfer from ORR custody to ICE, ICE considered the least restrictive setting available for each of these individuals after taking into account their danger to community, danger to self, and risk of flight.

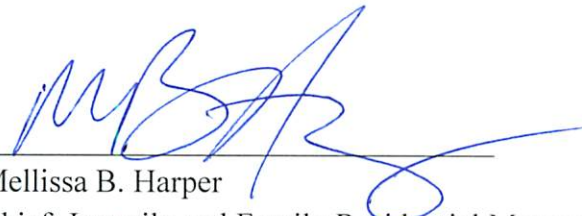
25. Following JFRMU's October 17, 2018 guidance, the Age-Out Review Worksheets are now being completed on a nationwide basis. ICE's JFRMU SharePoint site reflects that 581 Age-Out Review Worksheets and attached documentation were uploaded during the period between October 17, 2018 and January 30, 2019, for individuals who aged out of ORR custody during that same period. These documents are submitted herewith. Accordingly, ICE ERO is complying with the JFRMU October 17, 2018, guidance to document ICE's consideration of the least restrictive setting for each age-out pursuant to 8 U.S.C. § 1232(c)(2)(B), Ex. A, on a nationwide basis.

26. My office engages in quality control to ensure that the field offices properly document their custody decisions for age-outs. My staff regularly reviews a sampling of the Age-Out Review Worksheets to ensure the documentation reflects nationwide compliance with 8 U.S.C. § 1232(c)(2)(B). Although there may be variations in how individual employees fill out the form, these quality control reviews help JFRMU identify where further training is required.

27. An analysis of the Age-Out Review Worksheets for individuals who aged out between October 17, 2018 and January 30, 2019, reveals that of the 581 individuals who aged

out, 154 were detained and 427 were not detained.¹ Of the 427 not detained, 419 were released on an order of recognizance. *See* 8 U.S.C. § 1226(a)(2). Six were released on ICE's ATD program (members of this group also received orders of recognizance), one was released on bond, and one was released on an order of supervision, which occurs when an individual is subject to a final order of removal. *See* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of March, 2019, at Washington, D.C.



Mellissa B. Harper
Chief, Juvenile and Family Residential Management Unit
U.S. Immigration and Customs Enforcement

¹ The breakdown of custody determinations and release type referenced in this paragraph was compiled from the JFRMU SharePoint site. Slight deviations from the information contained in the Age-Out Review Worksheets can be attributed to clerical error.

Exhibit D

including Exhibits 1- 19

Filed under seal

Exhibit E

Filed under
seal

Exhibit F

Filed under
seal

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILMER GARCIA RAMIREZ, *et al.*,

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

)
)
)
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) Civil Action No. 1:18-CV-00508-RC
)
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PROPOSED ORDER

Defendants' Motion to Decertify the certified class in the above-captioned action is GRANTED and the class is DECERTIFIED as of this date. The Parties will meet and confer and submit a joint status report by _____ as to what individual claims remain in this case.

DATE: _____

RUDOLPH CONTRERAS
UNITED STATES DISTRICT JUDGE